

Serial No.: 10/802,118
Group Art Unit: 2633
Examiner: Kinfé Michael Negash

REMARKS

This reissue application is being filed to correct a failure to claim priority in the original issued U.S. Patent No. 5,923,450 filed on September 30, 1998 (the '450 Patent). The '450 Patent failed to claim priority to prior provisional application No. 60/060,526 filed September 30, 1997. According to M.P.E.P. 1402, if an application which became the patent to be reissued was filed prior to November 29, 2000, correction as to priority under 35 U.S.C. 119(e) would be permitted. In addition, since the application was filed prior to November 29, 2000, a petition for an unintentionally delayed priority claim under 37 C.F.R. 1.55(c) is not required. A preliminary amendment was included in the filing of the reissue application to amend the specification to correct the claim to priority. Such amendment is repeated above in the event not noticed by the Examiner.

In the first paragraph of the Office Action, the Office Action stated that the reissue oath/declaration filed with the application was defective because it fails to identify at least one error which is relied upon to support the reissue application. However, the reissue oath/declaration clearly states on top of page 2 that the error upon which reissue is based is, "The specification failed to include a claim of priority under 35 USC 119(e) to a prior provisional application."

In the second paragraph of the Office Action, the Office Action stated that claims 1-8 are rejected as being based upon a defective reissue oath/declaration under 35 USC 251. The Office Action states that the oath/declaration does not specifically state how and why the error arose. However, 35 USC 251, 37 CFR 1.175 and MPEP 1414 nowhere require a statement in the oath/declaration as to how and why the error arose. The MPEP 1414 specifically states that, "It is not necessary, however, to point out how (or when) the error arose or occurred. Further, it is not necessary to point out how (or when) the error was discovered." MPEP 1414, Part II, Paragraph B, page 1400-29 (Rev. 2 May 2004).

In the second paragraph of the Office Action, the Office Action also stated that the oath/declaration did not provide each inventor's residence and mailing address. The last known

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residence/mailling address of the inventors is provided in the attached reissue application declaration by the assignee.

In the third paragraph of the Office Action, the Office Action stated that the original patent must be received before the reissue application can be allowed. The original ribbon copy of the patent was submitted on March 16, 2004 with the filing of the reissue application.

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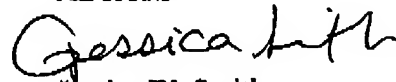
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CONCLUSION

Allowance of the application for reissue with the corrected claim of priority is respectfully requested. Should the Examiner have any further comments or suggestions, please contact Jessica Smith at (972) 477-9109.

Respectfully submitted,

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